



# Accountability of devotion of authority from medical personnel to nurses to perform medical actions

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## ABSTRACT

This paper explores the delegation of medical treatment from medical personnel to nurses in Indonesia and the associated civil liability issues. While medical personnel can delegate medical treatment to nurses under Article 65 of Law Number 36 of 2014, Law Number 38 of 2014 provides for deviations from this law. According to Article 29 paragraph (3) letter e of Law Number 38, the nurse is responsible for medical actions, raising concerns about civil liability if mistakes or negligence occur. The paper argues that medical personnel should bear civil law responsibility for medical actions carried out by nurses based on delegation of authority and suggests amending Article 32 of Law Number 38 of 2014 to clarify accountability and change the term "delegation of authority" to "cooperation or collaboration." The paper emphasizes the need to regulate and clarify civil liability in delegating medical action from medical personnel to nurses in Indonesia. By doing so, healthcare professionals can collaborate more effectively and safely to deliver quality healthcare services to patients. The proposed amendments to the law could provide a more equitable and responsible approach to delegating medical treatment to nurses, ensuring that patients receive the highest standard of care possible.

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## 1. INTRODUCTION

One branch of law that has developed in the last decade is health law (Sibuea & Sijabat, 2021; Reinders, 2011). The central or legal umbrella for health administration is Law Number 36 of 2009 concerning Health (Health Law) (Faradilla et al., 2022; Dewa Gede Sudika Mangku et al., 2021). One aspect of health regulated by the Health Law is the legal relationship between medical personnel and health workers based on the delegation of medical action. Under the Health Law, the professional positions of medical and nursing staff are equal. The legal relationship between nurses and medical personnel is a partnership, not a subordinate legal relationship with a superior (Fakih, 2013; Andryan et al., 2021). The legal position of nurses and medical personnel is a new paradigm according to Law Number 38 of 2014 concerning Nursing (Nursing Law) and Law Number 29 of 2004 concerning Medical Practice (UU Medical Practice) (Kruijtbosch et al., 2018; Hidayat et al., 2023).

In general, the legal basis for the legal relationship between nurses as health workers and medical personnel is regulated in Article 65 paragraph (1) of Law Number 36 of 2014 concerning Health Workers (UU Nakes) as follows "In carrying out health services, health workers can receive a delegation of actions medical from medical personnel." However, the law does not regulate the nature and type of legal relationship between health workers and medical personnel based on the

medical action. According to Article 65, paragraph (3) of the Health Law, the responsibility for delegating medical treatment is the responsibility of the medical staff who delegates the medical action (Mashdurohatun et al., 2014; Craftsman et al., 2013).

The Nursing Law regulates the legal relationship between nurses and medical personnel in the context of the delegation of medical action, which is different from the Health Law. According to the Nursing Law, the relationship between nurses and medical personnel is a legal relationship based on the delegation of authority as stipulated in Article 29 paragraph (1) letter (e) of the Nursing Law. Article 32, paragraph (1) of the Nursing Law stipulates that the implementation of tasks based on the delegation of authority can only be given in writing by medical staff to nurses to carry out medical procedures and to evaluate their implementation. Furthermore, Article 32, paragraph (2) of the Nursing Law regulates how to delegate authority as follows "The delegation of authority as referred to in paragraph (1) can be carried out in a delegation or mandatory manner." (Schoenbrod, 1984; Bradley & Kelley, 2008); (Strauss, 2012).

In practice, delegating authority to nurses based on Article 32, paragraph (2) of the Nursing Law often deviates from the provisions. For example, a delegation of authority is carried out in an unwritten manner, and doctors need to supervise and evaluate the results of actions; it is delegated to nurses about the level of clinical nurses (Sulistiyowati, 2021). Regulation of the delegation of authority still in general so that its implementation in the field raises obstacles and problems both in the process of delegation and issues of legal responsibility for the delegation of authority. The legal relationship between the medical staff and the nurse needs to be clarified, which results in legal liability if a patient's loss results in a lawsuit or lawsuit. Unclear delegation of authority has detrimental consequences for patients, as reported by the Patient Safety Committee at Kardinak Hospital, Tegal City (Sriwanto, 2020).

Based on the explanation of the arguments mentioned above, the writer can define this research problem as follows. *First*, what is the principle of civil liability for patient losses in case of a nurse's mistake or negligence in medical actions based on delegation of authority? *Second*, is it necessary to reorganize civil legal liability for medical actions carried out by nurses based on delegation of authority?

## 2. RESEARCH METHOD

The type of research method used is the juridical-normative research method which examines library materials as documented material (Soekanto, 2007; Bahn & Weatherill, 2013; Mayer, 2015). The library materials consist of primary, secondary, and tertiary legal materials (Marzuki, 2013; Malagon-Maldonado, 2014). Secondary legal materials are legal publications that are not official documents. Tertiary legal materials are legal materials that provide instructions and explanations of primary legal materials and secondary legal materials. Tertiary legal materials consist of legal dictionaries and legal encyclopedias. The approach method used in research is the statutory *approach*, the conceptual *approach*, and the case *approach* (Ibrahim, 2005; Pathak et al., 2013); (Linos & Carlson, 2017; Sgier, 2012)

## 3. RESULTS AND DISCUSSIONS

### **Civil Liability for Patient Losses in the Event of a Nurse's Error or Negligence in Performing Medical Actions Based on the Delegation of Authority**

The term medical action is a term in the medical field. According to Permenkes Number 290/MENKES/PER/III/2008, medical action is performed by a doctor or dentist in the form of preventive, diagnostic, therapeutic, or rehabilitative measures performed by a doctor or dentist on a patient (Harap, 2021; Inggriani & Santiago, 2021; Indra & Hafiz, 2022). However, the Law on Health Workers expands the subjects (people) who can perform medical actions by involving health workers. Article 65, paragraph (1) of the Law on Health Workers stipulates that health workers can receive a delegation of medical treatment from medical personnel in health services. With the delegation of medical action, health workers may carry out the medical action.

From the point of view of accountability, according to Article 65, paragraph (3) of the Law on Health Workers, the responsibility for medical action is the responsibility of the medical personnel who delegates the medical action. According to the author, the principle of accountability starts from

the mandate; in the context of the mandate, responsibility and accountability for the consequences and legal risks that arise as a result of carrying out the mandated rest on the shoulders of the mandate giver and not the mandate executor (Indroharto, 1993). Philipus M. Hadjon stated emphatically regarding the characteristics of the mandate as follows "In the case of a mandate, there is no recognition of authority or transfer of responsibility for authority. It concerns internal work promises between authorities and employees (Hadjon, 2002). Thus, if a patient's loss occurs, from the perspective of civil law, the burden of responsibility for the loss lies with the medical staff. The logic of this responsibility is acceptable because, according to the Medical Practice Act, the duties and responsibilities of carrying out medical actions are the duties and responsibilities of medical personnel.

The flow of thought and insights into the Nursing Law need to follow or deviate from the principles of responsibility regulated by the Law on Health Workers. At the same time, the Law on Health Workers is the "mother or legal umbrella" of the Nursing Law (Westrick, 2016; Westrick, 2013; Tingle & Cribb, 2013). The former, the Nursing Law, misunderstood the essence of the medical treatment delegation as medical staff's duties and responsibilities, thereby delegating legal responsibility, administrative law, criminal law, and especially civil law for delegating medical treatment to nurses. According to the author, the transfer of responsibility and legal risk for the delegation of medical treatment from the shoulders of medical personnel to nurses is an aberration that creates conflict (norm conflict) between the Health Law and the Nursing Law.

The transfer of legal responsibility is a consequence of the meaning or understanding of the term delegation, which is used in Law Number 38 of 2014. In the context of legal responsibility for delegated authority based on delegation, Ridwan HR made the following comments ". . . in delegating authority through this delegation, the giver of authority has been released from legal responsibility or third party claims if the use of that authority causes harm to the other party. (Ridwan, 2006). Guided by the notion of delegation of authority, civil liability for medical action for patient losses burdens the nurse. Thus, legal responsibility for medical action in Law Number 38 of 2014 adds to nurses' legal burden and risk.

Acceptance to carry out an order or mandate, including medical action by a nurse from a doctor, must be carried out according to instructions. Nurses must refrain from carrying out medical actions delegated to them negligently or even wrongly by nurses contrary to instructions. In such cases, if there is an error or negligence by the nurse in carrying out the delegated medical action, the nurse is responsible for the mistake or negligence that harms the patient. However, suppose there is no error or negligence on the part of the nurse, and the nurse carries out the medical action according to the instructions given. In that case, the doctor responsible for delegating medical action is responsible. Therefore, the delegation of medical procedures must be carried out in writing so that all delegations of medical procedures are clear and firm for both the giver and the recipient of the delegation.

### **Responsible Party from the Perspective of Civil Law Delegation of Authority from Medical Personnel to Nurses to Perform Medical Procedures**

The concept of civil legal responsibility for medical procedures, attributed to nurses in the statement above, needs to be revised and requires clarification (Schoenbrod, 1984; van Delden et al., 2008; Goodhall, 1997). When considering the liability in civil law for medical procedures nurses perform, several key factors need to be considered. Firstly, it is essential to recognize that the primary duty and responsibility for carrying out medical procedures lies with the medical personnel following the Health Law. Consequently, any legal risks and losses arising from these medical procedures naturally fall under the purview of the medical personnel.

Building upon the first point, a second supporting reason can be presented. The nursing profession operates autonomously, as defined by the Nursing Act. The rights, obligations, and scope of duties and responsibilities for nurses are clearly outlined within this legislation. When a nurse has delegated a medical procedure, their role is to assist medical personnel in its execution. Nurses are tasked with supporting medical personnel when they cannot directly perform these procedures. Consequently, the responsibility and legal risks associated with the medical procedure continue to rest with the medical personnel rather than being transferred to the nurses. It is illogical for nurses to

aid medical personnel in performing medical procedures only to assume the legal responsibility and risks associated with such actions.

In conclusion, within the civil law framework, the responsibility for medical procedures lies primarily with the medical personnel, following the Health Law. Nurses, operating independently under the Nursing Act, assist medical personnel in carrying out these procedures when necessary. Therefore, the legal responsibility and associated risks for medical procedures should not be attributed to nurses.

#### 4. CONCLUSION

Following the above arguments, the writer can draw some conclusions as follows. First, the principle of civil liability for patient losses due to errors or negligence by nurses who perform medical actions based on delegation of authority is a general civil principle based on errors and negligence, which is the negligent party's responsibility. In such a context, the nurse cannot be held responsible if there is no error or negligence. Civil law responsibility for medical actions carried out by nurses based on delegation of authority should be borne by medical personnel. Second, the nature of the liability concluded above brings a logical consequence: it is necessary to re-arrange the provisions governing civil legal liability for medical actions carried out by nurses based on delegation of authority.

In connection with the conclusions above, the suggestions that the author can put forward are as follows. First, Article 32 of Law Number 38 of 2014 concerning Nursing, which regulates the delegation of authority and accountability for the delegation of authority to carry out medical actions from medical personnel to nurses, needs to be changed. Second, according to the author, the term delegation of authority to carry out medical actions in Article 29 paragraph (1) letter e junto Article 32 of Law Number 38 of 2014 concerning Nursing needs to be changed to "cooperation or collaboration." The term collaboration is more appropriate to use following the new paradigm of the legal status of the nursing profession with medical personnel who have equal legal status.

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